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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL BUREAU OF INVESTIGATION
OFFICE OF THE ATTORNEY GENERAL

In the Matter of)
)
Policy and Rules Concerning the Interstate,)
Interexchange Marketplace)
)
Implementation of Section 254(g))
of the Communications Act of 1934,)
as amended)
)

CC Docket No. 96-61

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COMMENTS OF CABLE & WIRELESS, INC.

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SUMMARY

In its Notice of Proposed Rulemaking in CC Docket No. 96-61, the Commission proposes, *inter alia*, to implement Section 254(g) of the Communications Act, as amended, by adopting general rules requiring geographic rate averaging and rate integration for interstate toll services. Consistent with the Congress's intent in adopting this provision, the Commission intends to establish rules articulating its pre-existing policies on rate averaging and integration. Cable & Wireless, Inc. agrees with the Commission's approach set forth in Section VI of the *Notice* but submits that the agency should take this opportunity to clarify that:

- An interexchange carrier is not required to provide each of its services ubiquitously or even throughout the full extent of each of the geographic areas or states that it serves, provided that wherever a carrier chooses to extend provision of a service it does so on the condition that subscribers throughout the area of service coverage pay the same rates for that service.
- Similarly, carriers need not provide all service options in all areas; however, an interstate service option must be priced similarly wherever it is offered.
- Carriers that provide both "on network" and "off network" services should be permitted to offer the two types of services at different rates.

In addition, the Commission should not at this time consider the conditions under which Bell Operating Companies ("BOCs") should be relieved from any separation requirements the Commission imposes on BOC-affiliate provision of out-of-region interLATA services. Given the existing potential for abuse of market power that the Commission noted in its *Notice of Proposed Rulemaking* in CC Docket No. 96-21, in which the Commission proposes to promulgate such separation requirements, it is premature for the Commission to consider the circumstances under which the agency should modify or

eliminate such requirements. Rather, the Commission should gain experience regarding BOC provision of interLATA services and the development of the telecommunications marketplace in general under the new legislation before considering such matters.

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COMMENTS OF CABLE & WIRELESS, INC.

Cable & Wireless, Inc. ("CWI"), by its attorneys, hereby comments on Sections V and VI of the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceedings.¹

As detailed below, CWI supports the Commission's general position as stated in the *Notice* with regard to implementing the geographic averaging and rate integration provisions of Section 254(g) of the Communications Act of 1934, as amended.² However, CWI urges the Commission, when adopting rules to implement that Section, to clarify (1) that interexchange carriers are not required to provide all the services they offer wherever they provide any service, (2) that carriers may provide service options in some regions but not in

¹ FCC 96-123 (released March 25, 1996). Pursuant to the *Notice*, comments on Sections IV, V, and VI are due by April 19, 1996. Comments on other Sections in the *Notice* are due by April 25, 1996.

² 47 U.S.C. § 254(g), as added by Section 101 of the Telecommunications Act of 1996, Pub. L. 104-104 (enacted Feb. 8, 1996) ("1996 Act").

others, and (3) that, consistent with historical practices, carriers may have different rate schedules for on-network and off-network services. In addition, CWI submits that it is premature, on the eve of the Bell Operating Company's unprecedented entry into interLATA services pursuant to separation requirements, to consider under what conditions it would be appropriate for them to provide such service as nondominant carriers on a non-separated basis. Rather, the Commission should gain experience with BOC affiliate provision of out-of-region interLATA services before considering such issues.

I. STATEMENT OF INTEREST

CWI is a domestic and international common carrier which provides a broad range of switched and private line services. In this proceeding, the Commission recognizes that the interexchange marketplace has matured over the past decade. Customers enjoy a wide variety of service options from a diversity of providers. As one of the largest nationwide providers of interexchange telephone services serving business subscribers, CWI has endeavored to provide its existing and new customers with service offerings that best suit their needs. CWI therefore has a vital interest in commenting on proposed rules that may affect the availability of those options and the level of competition in the marketplace.

II. GEOGRAPHIC AVERAGING AND RATE INTEGRATION

In Section VI of the *Notice*, the Commission proposes to implement the geographic rate averaging and rate integration provision of the 1996 Act. Specifically, new Section 254(g) of the Communications Act requires the Commission to:

. . . adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.³

In other words, an interexchange carrier may charge no more for a given service in a rural, high-cost area than it charges in an urban area. Moreover, an interexchange carrier must charge the same for interstate services in one State as it does for the same services in any other State where offered.

The Commission observes in the *Notice* that the rate averaging and integration provisions of the 1996 Act represent a codification of the Commission's own policies.⁴ Indeed, the Joint Explanatory Statement accompanying the 1996 Act confirms this interpretation: "New Section 254(g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban

³ 47 U.S.C. § 254(g).

⁴ See *Notice* ¶¶ 66-67, 74-76.

subscribers."⁵ These policies arose out of concerns with the pricing of interstate services by dominant carriers, particularly AT&T,⁶ which until just a few months ago was regulated as dominant.

CWI supports the Commission's proposed general statement of rules to implement these two provisions of Section 254(g).⁷ However, consistent with the Commission's own historical practices, when adopting these regulations the Commission should clarify its policies in three specific ways.

First, the Commission should make plain that an interexchange carrier is not required under the rules to provide each of its services ubiquitously or even throughout the full extent of each of the geographic areas or states that the carrier serves. Neither the Communications Act of 1934, as amended, the 1996 Act, nor previous Commission policy imposed any requirement that a non-dominant interexchange carrier extend the area in which it provides service generally or in which it provides any particular service. To the contrary, the Commission has long encouraged the development of regional carriers to build out their networks and enhance their service offerings in ways that can be economically justifiable for their respective businesses. The imposition of a requirement that services be provided ubiquitously or coterminously with other services would make carriers reluctant to introduce new services in those areas where it would be cost-justified. The end result of such a requirement would be less competition and fewer consumer choices, rather than more, for

⁵ Joint Explanatory Statement, 18.

⁶ See cases cited in Notice ¶ 66, n. 147.

⁷ See *id.* ¶¶ 67 (geographic averaging) and 76 (rate integration).

rural and high cost areas.⁸ Of course, wherever an interexchange carrier chooses to extend provision of a particular service, under the 1996 Act and the Commission's rules, it should be able to do so only on the condition that subscribers throughout the area of service coverage pay the same rates for that service.

Second, the Commission should clarify, consistent with its own existing precedent, that nondominant interexchange carriers need not provide all service options in all areas where service is provided. The Commission, in evaluating different service offerings in the past, has traditionally recognized that different service options, in fact, constitute different services -- *e.g.*, MTS and WATS, optional calling plans -- and that different rate plans based upon different calling patterns do not contravene its geographic averaging policies. Accordingly, consistent with this prior precedent, the Commission should permit carriers to offer different service options in different areas in which they provide service without running afoul of Section 254(g) and the Commission's implementing regulations.⁹ CWI emphasizes, however, that it is not suggesting that carriers be permitted to provide the same

⁸ Conversely, interexchange carriers serving all or most of the U.S. may be at a competitive disadvantage if they are unable to offer regional options in areas with high volumes and low costs. *See* Notice ¶ 69, n. 154.

⁹ In the event the Commission concludes that such service options and pricing plans are inconsistent with the geographic averaging and rate integration provisions of the 1996 Act, CWI submits that nondominant carriers do not possess sufficient market power to harm consumers by geographic deaveraging through such options and plans (with the possible exception of AT&T). Accordingly, in these circumstances, the Commission should consider forbearing from enforcing Section 254(g) against nondominant carriers (other than AT&T) under new Section 10 of the Communications Act of 1934, as amended. Such an action would be consistent with the historic development of the rate averaging and integration policies which was focused on dominant carriers. In addition, it would, as explained above, promote competition in interexchange services, enhance consumer choice, and generally be in the public interest.

service option in both urban and rural and high-cost areas at different prices. Moreover, the spirit and letter of the rate averaging and integration provisions of the 1996 Act require that an interstate service option be priced similarly *wherever it is offered*, but does not require that every service option be offered in every location.

Third, the Commission's rate averaging and integration rules should permit interexchange carriers to provide services carried on their own network facilities -- "on-network" services -- at different rates than those provided using the facilities of other interexchange carriers -- "off-network" services. Carriers have a legitimate basis for pricing on-network service and off-network service differently. Services provided on a carrier's own facilities are typically less costly than those provided on a resale basis off-network. If carriers cannot price off-network services differently than those on-network, the Commission will discourage the full scope of potential off-network services and reduce the overall level of competition and consumer choice in interexchange services. Moreover, pricing on- and off-network services differently is consistent with a plain reading of Section 254(g) because the difference in pricing is not related to the geography of the services, *i.e.*, the distinction between urban and rural areas or the boundaries of one State and another. Accordingly, the Commission should explain in adopting its implementing regulations that interexchange carriers may offer different pricing for on-network service and off-network service without violating Section 254(g).

In addition to encouraging the Commission to articulate the above clarifications, CWI urges the Commission to rely upon the Section 208 complaint process to enforce the Section

254(g) requirements.¹⁰ As CWI will discuss in comments to be filed on Section III of the *Notice*, the Commission may forbear from requiring nondominant interexchange carriers to file domestic interstate tariffs. In such a regulatory environment, one way to compel carriers affirmatively to review their pricing for compliance¹¹ is a requirement to file certifications, or some variation thereof. However, even certification filings may not be a meaningful and wholly effective method, as, in the end, only Section 208 complaints will be able to ascertain whether carriers are in compliance. Given this uncertainty, the Commission should not require carriers to file certifications, but rather should make clear carriers' obligations in this regard, emphasizing the availability of the complaint process to consumers. This approach would support the Commission's regulatory streamlining goals, as well as the substantive requirements of Section 254(g) of the 1996 Act.

III. SEPARATION REQUIREMENTS FOR BOC OUT-OF-REGION SERVICES

In Section V of the *Notice*, the Commission seeks comment on modifying or eliminating its separation requirements for nondominant treatment of interexchange service provided by independent local exchange carriers outside their local exchange areas.¹² The

¹⁰ See *Notice* ¶¶ 70, 78.

¹¹ As CWI will explain in its comments on Section III of the *Notice* to be filed on April 25, while tariffs for domestic interexchange services should not be required, nondominant carriers should be permitted to file such tariffs.

¹² *Notice*, ¶ 61.

Commission also seeks comment on whether it should take similar action with regard to Bell Operating Company ("BOC") provision of out-of-region interLATA services.¹³

CWI submits that it is premature for the Commission to consider the conditions under which it might lessen the separation requirements on BOCs providing out-of-region interLATA services. At this time, as the *Notice* observes, the Commission is engaged in the process of *imposing* such requirements.¹⁴ Indeed, the ink is barely dry on the comments in that rulemaking. As the record demonstrates in Docket 96-21, the BOCs will have numerous opportunities, absent appropriate separation requirements, to exercise their market power to the advantage of their out-of-region interLATA operations. This ability far outweighs any similar anticompetitive activity in which the independent LECs could engage. Accordingly, before considering lifting or lessening separation requirements on BOC out-of-region interLATA services, the Commission should gain experience with BOC affiliate provision of such services. If the Commission modifies or eliminates the requirements for independent LECs, the Commission should wait until it gains meaningful experience with such deregulation before considering similar relief for the BOCs.

¹³ *Id.*

¹⁴ *Id.* ¶ 56 citing BOC Provision of Out-of-Region Interstate, Interexchange Services Notice of Proposed Rulemaking, CC, Docket No. 96-21, FCC 96-59 (rel. Feb. 14, 1996).

IV. CONCLUSION

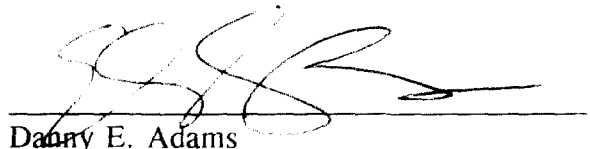
For the foregoing reasons, the Commission should implement rules regarding geographic averaging and rate integration as proposed in the *Notice* but should clarify that interexchange carriers are not required to provide their services or service options to all areas in which they provide services of any kind. The Commission should also make plain that differential pricing for on-network and off-network services does not violate Section 254(g). Finally, the Commission should decline at this time to consider the conditions under which BOCs should be partially or completely relieved of separation requirements regarding out-of-region interLATA services until the Commission gains meaningful experience with BOC provision of such services.

Respectfully submitted,

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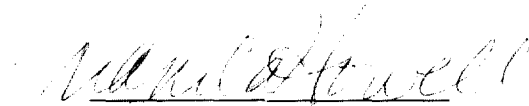
April 19, 1996

CERTIFICATE OF SERVICE

I do hereby certify that on this 19th day of April, 1996, true and correct copies of the foregoing *Comments of Cable & Wireless, Inc.* were service, by first class mail, postage prepaid, to:

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